NO. 93-419

Supreme Court, U.S.
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In the
Supreme Court of the United States

OCTOBER TERM, 1993

VIRGINIA BOULET, LOUIS G. AUTHEMENT, WILLIAM D. AARON, JR.,

Petitioners,

VERSUS

THE HONORABLE JUDGE ULYSSES GENE THIBODEAUX, THE HONORABLE JUDGE BILLIE COLOMBARO WOODARD, THE HONORABLE JUDGE P. J. LABORDE,

Respondents.

PETITION OF VIRGINIA BOULET, LOUIS G. AUTHEMENT AND WILLIAM D. AARON, JR. FOR WRIT OF CERTIORARI FROM THE LOUISIANA SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether a lawyer can be convicted of constructive contempt of court and incarcerated for expressing his or her thoughts about the meaning of a court order in private conversations with clients and co-counsel.

2. Whether the criminal trial of a defendant accused of constructive contempt of a court order must be presided over by a judge other than the judge who authored the order when the intent of the order is the basis for the contempt charge.

3. Whether a person accused of constructive contempt of court has a constitutional right to be present in the courtroom during the criminal contempt hearing.

LIST OF ALL PARTIES TO THE PROCEEDINGS BELOW

1. Virginia Boulet, Petitioner
2. Louis G. Authement, Petitioner
3. William D. Aaron, Jr., Petitioner
4. Judge Ulysses Gene Thibodeaux, Respondent
5. Judge Billie Colombaro Woodard, Respondent
6. Judge P.J. LaBorde, Respondent
7. Richard Seale, Plaintiff
8. U.J. Prevost, Plaintiff
9. Bert Seale, Plaintiff
10. Mark Seale, Plaintiff
11. C.J. Prevost, Plaintiff
12. First Crowley Financial Corporation, Plaintiff
13. Joseph W. Berey, Plaintiff
14. Rayne State Bank, Plaintiff
15. Donald Jones, Plaintiff
16. Greg Jones, Plaintiff
17. Kyle Jones, through his Attorney-in-Fact, Emily Stoma, Plaintiff

18. Ruth T. Matthews, through her Attorneys-in-Fact, H.E. Barousse, Jr. and Leon K. Poche, Plaintiff

19. R. Preston Wailes, Plaintiff

20. Elton A. Arceneaux, Plaintiff

21. First Continental Bancshares Inc., Plaintiff

22. Gerald H. Smith and Elizabeth Smith, through their Attorney-in-Fact, Nancy Kincaid, Plaintiff

23. H.K. Sweeney, Plaintiff

24. Mary Etta Johnston, Plaintiff

25. Leon K. Poche, Plaintiff

26. Larry A. Baker, Defendant

27. Joseph D. Bouligny, Defendant

28. Robert L. Fournet, Defendant

29. Charles R. Milam, Defendant

30. Daniel R. Domingue, Defendant

31. Gerald Hanchey, Defendant

32. F. Lloyd Comeaux, Defendant

33. The Bank of Lafayette, Defendant

34. Henry Perret, Lafayette counsel for the Bank of Lafayette

35. Robert Daigle, Lafayette counsel for the Bank of Lafayette

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STATEMENT OF JURISDICTION

The Petitioners' Application for Certiorari was denied by the Louisiana Supreme Court on June 18, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTES INVOLVED

AMENDMENT I TO THE UNITED STATES CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT VI TO THE UNITED STATES CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

AMENDMENT XIV TO THE UNITED STATES CONSTITUTION

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in Courts Below

The Petitioners are lawyers licensed to practice law and actually practicing in the State of Louisiana. The Petitioners' criminal contempt convictions arose out of litigation brought by certain shareholders to enjoin the issuance of stock by the Petitioners' client, the Bank of Lafayette.

On May 12, 1993, a Louisiana trial court denied the shareholders' request for a preliminary injunction against the proposed stock issuance. (A copy of the district court's ruling is included as Appendix A). Immediately thereafter, the complaining shareholders filed an application for a supervisory writ with the Louisiana Third Circuit Court of Appeal, the intermediate state appellate court; they also requested the appellate court to enjoin immediately the stock issuance or alternatively to grant mandatory injunctive relief in the form of issuing additional bank stock to them.

On May 14, 1993, Respondents, acting as a panel of the Louisiana Third Circuit Court of Appeal, granted the shareholders' request for a supervisory writ and issued an order that stated: "Writ granted. All proceedings in this case are stayed pending further action of this court." However, the Respondent judges did not grant either form of requested injunctive relief. (A copy of the Respondents' Order is marked as Appendix B). In the absence of prohibitory or mandatory injunctive relief, the Petitioners' client issued the bank stock shortly thereafter.

On May 18, 1993, the Respondents ordered all lawyers whose names appeared on the pleadings in the case, including the three Petitioners, to appear at a hearing to show cause why they should not be found in contempt of court for "allegedly participating in the issuance of stock in violation of this court's order." (A copy of the show cause order is reproduced as Appendix C).

On May 27, 1993, the Respondents found all five lawyers who represented the Bank of Lafayette guilty of criminal contempt of court for "advising" that the issuance of stock was "proper." The Respondent judges sentenced each of the five lawyers to serve 30 days in the Calcasieu Parish jail, imposed a criminal fine of $500 upon each lawyer and assessed each lawyer with $75 for "court costs." After Petitioners had been in custody for one hour, the Supreme Court of Louisiana stayed the execution of their sentences.

On June 18, 1993, the Supreme Court of Louisiana amended Respondents' sentences to eliminate the jail terms, but declined to review the adjudications of contempt. In late August, 1993, the Disciplinary Counsel for the Louisiana Bar Association notified Petitioners that their convictions of criminal contempt expose them to additional sanctions by the state Supreme Court.

B. Statement of Facts

The Petitioners practice law in New Orleans, Louisiana. Collectively, they served as co-counsel for the Bank of Lafayette, Louisiana (the "Bank") in a lawsuit involving a proposed sale of stock by the Bank. The Bank also was represented in the lawsuit by two attorneys from Lafayette, Louisiana ("Lafayette counsel"). The bank stock

was to be issued in compliance with an order by the FDIC that the Bank raise its capital to safe and sound levels.

The primary lawsuit was filed on March 24, 1993 in a state district court in Lafayette, Louisiana by shareholders who opposed the Bank's proposed stock sale. The shareholders succeeded in obtaining an *ex parte* temporary restraining order against the sale. On May 12, 1993, after analyzing extensive legal memoranda, the state court vacated the temporary restraining order and ruled in favor of the Bank (Appendix A). That same day, the complaining shareholders filed a request for a supervisory writ to the Louisiana Third Circuit Court of Appeal, which sits in Lake Charles, Louisiana. The shareholders' filing alternatively sought prohibitory injunctive relief and mandatory injunctive relief.

In the middle of the afternoon on Friday, May 14, 1993, the Respondent state judges issued the following order: "Writ granted. All proceedings in this case are stayed pending further action of this court." The Respondents did not grant either form of injunctive relief that the complaining shareholders requested. As the Bank's contractual agreements with its proposed investors (who were to purchase the stock in question and infuse the Bank with the requisite capital) contained a May 15 expiration date, the Bank's president sought immediate counsel as to the meaning of the May 14th stay order.

During the course of the afternoon of May 14, Lafayette counsel discussed by telephone with Petitioner Boulet the meaning of the stay order. In particular, Lafayette counsel requested Petitioners' assistance in advising the Bank whether the stay order enjoined the issuance of stock. Petitioner Boulet discussed the stay order with

Petitioner Authement, who did not speak with Lafayette counsel.

In the ensuing conversations, the Petitioners Boulet and Authement discussed among themselves, and Petitioners Aaron and Boulet had separate conversations with Lafayette counsel about the following:

(1) It is settled by Louisiana jurisprudence that an order "staying proceedings" does not have the effect of enjoining any action by the parties to the on-going litigation; rather, under Louisiana law the only effect of a stay order is to suspend further court proceedings in the lower court while the case is being reviewed by the higher court.

(2) Although the complaining shareholders had specifically requested that Respondents issue an injunction against the stock issuance, no language pertaining to an injunction or issuance of stock was contained in the Respondents' May 14 stay order.

(3) Under Louisiana law an injunction must clearly state the conduct to be enjoined and must be addressed specifically to the party enjoined. The stay order was not addressed to the Bank and it did not mention the issuance of bank stock.

(4) Under Louisiana law an injunction can issue only upon the posting of a bond; the stay order did not require nor allude to a bond.

On the evening of May 14, 1993, the Bank's president decided to issue the stock unless his counsel advised him that the stay order enjoined the issuance of bank stock. He posed that question directly to Lafayette counsel. Lafayette

counsel, relying in part on their conversations with Petitioners Aaron and Boulet, replied that the stay order did not constitute an injunction.

On May 18, 1993, the Respondents issued orders to the Bank's directors and to each of the Bank's five lawyers directing them to appear before the Court in Lake Charles, Louisiana to show cause why they should not be held in contempt of court "for allegedly participating in the issuance of stock."

On May 27, 1993, the Respondent judges conducted a contempt hearing; during the contempt hearing, the Respondents acted as prosecutor,[1] witnesses, judge, jury and disciplinarian. The Respondent judges excluded the Petitioners from the courtroom, admitting them only to give testimony and to be sentenced. On the same day, the Respondent judges sentenced the Petitioners and Lafayette counsel to thirty days in jail and ordered each of them to pay a $500.00 fine. (A copy of each Judgment and the reasons orally stated for these convictions are included as Appendix D). The Respondents summarily denied the Petitioners' request for a stay of the judgments and jail sentences while they sought review by the Louisiana Supreme Court; Respondents remanded the lawyers to the immediate custody of the Sheriff of Calcasieu Parish, Louisiana.

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[1] The Respondents called each director of the Bank as well as each of the Bank's lawyers to testify; Respondents questioned each witness in turn. The record reflects that the Respondents interviewed at least one third party witness prior to the hearing and apparently made credibility determinations before the hearing began. This third party witness was an employee of the Clerk of Court for the Third Circuit Court of Appeal.

On the evening of May 27th, the Louisiana Supreme Court stayed further execution of the judgments of incarceration; thus, Petitioners were released from custody to permit them to prepare a writ of certiorari to the State Supreme Court. Petitioners filed their application for review by the Louisiana Supreme Court on May 28, 1993.

On June 7, 1993, the Respondent state judges filed a brief with the Louisiana Supreme Court opposing Petitioners' request for appellate review.[2] The Respondents' brief, submitted in the form of a "per curiam opinion," sought to defend the Respondents' conduct in the contempt proceeding and to supplement their rationale for the contempt convictions of all five attorneys. (The brief filed by Respondents is duplicated as Appendix E). At this juncture, the Respondent judges for the first time admitted that their stay order did not constitute an injunction (which was the precise advice Petitioners had communicated to the Bank's Lafayette counsel), but the three state judges contended that the Petitioners were guilty of violating the "intent" of their order. In their brief, the Respondent judges clearly acknowledged that they had found Petitioners guilty of contempt solely for "advising" that the issuance of stock was "proper."

On June 18, 1993, the Louisiana Supreme Court amended the Petitioners' sentences to remove the jail terms, but declined to review the adjudications of contempt or the Petitioners' claims that the contempt hearing violated their basic constitutional rights. (A copy of the State Supreme Court's ruling is appended as Appendix F).

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[2] The filing of this brief by Respondents is illustrative of the absence of judicial neutrality that permeated the contempt hearing.

SUMMARY OF THE ARGUMENT

This Court has determined that giving legal advice to clients is "fully protected speech" under the First Amendment to the United States Constitution. In this case, the Petitioners were found guilty only of "advising." If giving legal advice as to the import of a court order is directly protected by the First Amendment, the same permissible conduct should not be criminalized indirectly and punished through a finding that such speech constitutes constructive contempt of a court order.

Petitioners acknowledge that First Amendment rights are circumscribed by the authority of a court to punish litigants and their lawyers for direct contempt. The power to punish direct contempt of court permits the court to retain order in court proceedings and is considered essential to the impartial administration of justice. These reasons for curtailing free speech do not apply, however, when the alleged contempt is "constructive" and the decorum of court proceedings is not threatened by the acts of thinking and speaking.

The power of a state to prosecute lawyers for constructive contempt solely for expressing in good faith their views as to legal issues would severely damage the attorney-client relationship. The freedom of an attorney to offer legal opinions to a client is essential to our legal system, particularly, as in this case, when the client seeks advice on the meaning of a court order. Prosecution for the expression of thoughts undermines the attorney's primary and most important role, *viz*: to provide legal guidance to the client. Lawyers should be answerable to their clients, not subjected to criminal prosecution, for the accuracy of their legal opinions.

This case also presents important issues with respect to the constitutional rights of criminal defendants accused of constructive contempt of court. In previous cases, this Court has stated that such defendants are entitled to be treated with "elementary fairness" and afforded the full panoply of due process. The State Supreme Court's ruling collides with the latest pronouncement by the Fifth Circuit Court of Appeals, which includes the State of Louisiana.

Petitioners specifically request this Court to determine if elementary fairness and due process include the right of a person charged with criminal constructive contempt to an impartial hearing before a judge who did not author the court order under scrutiny when that analysis depends upon the intent of the court. Petitioners also maintain that the defendant's right to be present in the courtroom during the trial for the purpose of facing his or her accusers and assisting his or her counsel prevent these convictions from withstanding constitutional muster.

ARGUMENT

A. This Case Presents Special and Important Reasons for Granting a Writ of Certiorari

By refraining from vacating Petitioners' contempt convictions, the Louisiana Supreme Court effectively resolved important constitutional issues in a fashion that is contrary to the rulings of this Court and the most recent ruling by of the U.S. Court of Appeals for the Fifth Circuit. In light of these constitutional violations and the conflicting case law, this case warrants review by this Court in conformity with Rule 10 of the Rules of this Court. See,

e.g., United States v. Columbia Broadcasting System, Inc., 497 F.2d 107 (5th Cir. 1974).

This petition presents an important question of first impression under the First Amendment to the United States Constitution. This petition also raises two important constitutional questions about due process and the elementary fairness of a contempt proceeding in the context of an alleged contempt that is both "constructive" (occurring outside of the courtroom) and criminal, which is bottomed upon the "intent" of the judges.[3]

This Court has held that a lawyer cannot be jailed for criminal contempt for giving his client good faith advice, *Maness v. Meyers*, 419 U.S. 449, 468, 95 S.Ct. 584, 42 L.Ed.2d 574 (1975), even if such advice is wrong.[4] *In Re Watts*, 190 U.S. 1, 32, 23 S.Ct. 718, 47 L.Ed. 933 (1903). The holdings in these cases are predicated on the client's right to receive unfettered advice of counsel with respect to his constitutional rights, and on the importance of preserving the independence of the bar. This Court has not directly addressed the lawyer's own constitutional right under the First Amendment to speak freely to clients and co-counsel without fear of facing a jail term if a judge disagrees with the

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[3] This Court carefully has delineated the difference between civil contempt and criminal contempt. See *Hicks v. Feiock*, 485 U.S. 624, 631-33, 108 S.Ct. 1423, 99 L.Ed.2d 721 (1988).

[4] Affording Respondents the benefit of every doubt and assuming the Petitioners' analysis was legally incorrect (which it was not and which Respondents ultimately acknowledged), Respondents nonetheless chose not to follow this Court's ruling in *Maness* without explanation. Failure to abide by this Court's decision in *Maness* deprived Petitioners of their constitutional liberties and the state court's action should be rectified by this Court.

advice given. In *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, 647, 105 S.Ct. 2265, 85 L.Ed.2d 652 (1985), this Court indicated that legal advice falls within the parameters of "fully protected speech" under the First Amendment. This case presents a needed refinement of the broad tenet stated in *Zauderer*. Without review by this Court, judges, like Respondents, may continue to believe that lawyers' protections under the First Amendment and Fourteenth Amendment can be stripped from them through a criminal prosecution for constructive contempt of court.

This Court has held that a criminal contempt trial must be conducted with "elementary fairness," *Taylor v. Hayes*, 418 U.S. 488, 500, 94 S.Ct. 2697, 41 L.Ed.2d 897 (1974), which has been held to include the right to a trial by jury in cases involving felony contempt, *Bloom v. Illinois*, 391 U.S. 194, 198, 88 S.Ct. 1477, 20 L.Ed.2d 522 (1968), and the right to adequate notice and an opportunity to be heard, *Groppi v. Leslie*, 404 U.S. 496, 499, 92 S.Ct. 582, 30 L.Ed.2d 632 (1972). This Court has also held that, in certain cases involving direct contempt, a defendant is entitled to a trial before an impartial judge. Thus far, this Court has not determined whether elementary fairness and due process require that a criminal trial for constructive contempt be tried before a judge other than the judge who crafted the order in question when the intent of the judge is at issue, and whether the accused has an absolute right to be present during the contempt hearing.

Petitioners have been deprived of their liberty and property without due process of law. Besides vacating Petitioners' unconstitutional convictions, this Court should grant certiorari to eliminate the irreconcilable conflict among Courts in handling a constructive contempt charge when the

intent of the judicial authors is the underpinning of the contempt charge.

B. The State Should Not Be Allowed to Prosecute Indirectly the Good Faith Transmission of Legal Thought, Through a Charge of Criminal Contempt, When the Conduct is Completely Protected by the First Amendment and Cannot Be Directly Prosecuted

When an attorney voices his or her interpretation of a court order, the utterance of that opinion should be fully protected by the First Amendment. The act of "advising" about the meaning of court orders is fundamental to the role of a lawyer in our legal system. When responding to pre-trial discovery orders, for example, a lawyer may be called upon to interpret a court order numerous times. To properly perform their job, lawyers must be free to discuss with clients and co-counsel the significance of court orders without fear of criminal prosecution.

In this regard, the First Amendment makes no distinction between lawyers and all other Americans, whether they be newspaper columnists, doctors, priests, counselors and other persons who give advice for a living, or any other citizen who may offer a friend personal advice. The guarantee to speak freely in private and as part of legitimate business activity is the core protection of the First Amendment. The First Amendment bars a state from bringing criminal contempt charges against a person solely because that person related advice to another, even when the advice later proves to be a matter about which reasonable parties may differ.

Petitioners were found merely to have expressed a legal opinion that the issuance of bank stock was not enjoined by the stay order. Based upon their legal research and analysis, Petitioners had a constitutional right to opine that the court order did not constitute an injunction. The thoughts expressed by Petitioners did not approach contemptuous conduct, especially since the Respondents ultimately concluded that an injunction had not been issued. Within two weeks after Respondents found Petitioners guilty of criminal contempt, these same judges acknowledged in their brief to the State Supreme Court that an injunction had not been issued by the Third Circuit -- which was the precise conclusion communicated by Petitioners to the Bank's Lafayette counsel (Appendix A-27).

Petitioners recognize that, as between themselves and their clients, lawyers are responsible for the accuracy of their advice. However, a state should not be able to imprison lawyers for their thoughts and opinions, whether those opinions relate to business advice or constitutional advice and whether the opinions are sound or imperfect.

C. Out-of-Court Discussions Between Litigants and Their Lawyers Should Enjoy the Full Protections of the First Amendment

During the course of a court proceeding, a lawyer's First Amendment rights, like those of his client, are necessarily circumscribed because of the overriding concerns that the trial be conducted in an orderly fashion and the decorum of the courtroom be maintained. As a result, lawyers who make insulting and undignified remarks during a court proceeding or who deliberately disturb court proceedings may be found in direct contempt of court. *In Re*

Oliver, 333 U.S. 257, 275, 68 S.Ct. 499, 92 L.Ed.2d 682 (1947).

The conduct at issue in the case of constructive contempt occurs outside of the courtroom; in this situation, there is not the same type of competing balance to maintain decorum during the judicial proceedings. In the privacy of conversations with a client, even if the lawyer is critical of the court, the decorum of the court is not disturbed by the lawyer's thoughts and advices regarding the meaning of a judicial order. Thus, when the conduct questioned by a court is limited to giving legal advice or expressions of legal analysis in the privacy of a lawyer's office, a lawyer, like any other person, should be entitled to the fundamental protections afforded by the First Amendment. *Cf., Texas v. Johnson*, 491 U.S. 397, 105 L.Ed.2d 342, 109 S.Ct. 2533 (1989) ("the government may not prohibit expression simply because it disagrees with its message").

D. Subjecting a Lawyer to Prosecution for the Advice Given About the Meaning of a Court Order and the Avenues of Compliance with a Court Order Would Eviscerate the Attorney-Client Relationship

The attorney-client relationship is a cornerstone of the American judicial system. Lawyers are accountable to their clients for the accuracy of the advice given about court orders. However, lawyers should not be exposed to criminal prosecution for statements made as a prelude to or as part of a lawyer-client discussion; otherwise the protections of the First and Sixth Amendments to the United States Constitution will be vitiated. To prevent this erosion of the attorney-client relationship and to protect these constitutional tenets, this Court should grant the petition for certiorari.

E. A Criminal Defendant Accused of Constructive Contempt of a Court Order Has a Right Under the Due Process Clause of the Fourteenth Amendment to be Tried by a Judge Other Than the One Who Issued the Order When the Intent of the Order Is the Basis of the Contempt Charge

This Court has considered cases in which, at the conclusion of a criminal trial, the trial judge imposed penalties on the defendant or his lawyer for insults made to the court during the course of the trial. *Taylor v. Hayes*, *supra*; *Mayberry v. Pennsylvania*, 400 U.S. 455, 91 S.Ct. 499, 27 L.Ed.2d 532 (1971); *Offutt v. United States*, 348 U.S. 11, 75 S.Ct. 11, 99 L.Ed. 11 (1954). In each of these cases, this Court has held that the contemnor was entitled to a trial on such charges before another judge.

These cases do not constrain the power of a court to punish direct contempt immediately and summarily, nor do they constrain the power of a court to order incarceration or other harsh remedies when a litigant or lawyer is in contempt of that court's order, so long as the penalties involved are civil in nature. However, these cases state that after the trial has ended, and the decorum of the court and order of its process are no longer directly threatened by the contemnor's conduct, the Due Process Clause of the Fourteenth Amendment requires that a defendant in criminal contempt proceedings should be given a public trial before a judge other than the one offended by the alleged contemnor. See, *e.g.*, *Taylor v. Hayes, supra.*

This Court has never considered whether an alleged contemnor has the right to a trial before an impartial judge when such person's alleged contempt is both constructive and criminal and is predicated upon the alleged violation of the

court's intent. In this category of cases, there is absolutely no reason to deny a defendant his or her due process protections, including their due process safeguard to be tried by a judge who is and appears impartial and who is not performing the roles of prosecutor, witness, judge, jury and disciplinarian. The importance of due process protections is heightened when the defendants are subjected to jail terms and criminal fines, and, as in this case, the contempt hearing is based singularly upon what the judge intended by the order in question.

The criminal contempt hearing conducted by the Respondent judges in this case turned upon their intent when issuing their May 14 stay order. In the contempt hearing, a trio of state judges established the law, investigated and prosecuted those they believed to have violated their court order, offered testimony as to the meaning of their court order (which they later admitted hinged upon their intent), sat in judgment on their own charges, and then punished as they saw fit. It is inconsistent with the most basic principles of our criminal justice system and due process to bestow this much power in the hands of any officer of a state and to allow criminal prosecutions to be pursued in this fashion.

The Respondent judges assumed the responsibilities of lawmaker, prosecutor, witness, judge, jury and disciplinarian; by this course of conduct, the Respondents denied the Petitioners an indispensable element of fundamental due process -- an objective, impartial tribunal to determine their guilt or innocence.

The ruling by the Louisiana Supreme Court below conflicts directly with the decision by the U.S. Court of Appeals for the Fifth Circuit in *U.S. v. Columbia Broadcasting System, Inc., supra.* In the *CBS* case, the Fifth

Circuit recognized the impropriety of a judge trying a criminal contempt charge when the judge was a principal actor in the factual issues to be determined. The facts in *CBS* closely parallel what occurred before Respondents. The Respondents used their own unexpressed intent as the basis of Petitioners' conviction.

The Court of Appeals in *CBS* rejected the dual role of the judge as witness and trial judge in a criminal contempt hearing. Recognizing the unique nature of a criminal contempt action, the Fifth Circuit stated:

> The recondite niceties of contempt law coupled with the strange milieu of a judge passing on the clarity of his own orders, which had to be substantiated largely by his own legal staff, should make us particularly sensitive to the demands of justice, and more particularly, to the appearance of justice. The guarantee to the defendant of a totally fair and impartial tribunal, and the protection of the integrity and dignity of the judicial process from any hint or appearance of bias is the palladium of our judicial system.

The Fifth Circuit's ruling in *CBS* is incongruous with the approach taken by the Louisiana Supreme Court. This Court should grant certiorari to resolve these conflicting views.

F. A Criminal Defendant Accused of Constructive Contempt of Court Has the Right to be Present in the Courtroom During the Course of the Trial, and to be Allowed to Face His or Her Accusers and Assist His or Her Counsel During the Proceeding

The Confrontation Clause of the Sixth Amendment to the United States Constitution provides that in all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him or her. This Court has held that the Fourteenth Amendment makes the guarantees of this clause obligatory upon the states. *Pointer v. Texas*, 380 U.S. 400, 403, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965). This Court also has held that one of the most basic rights guaranteed by the Confrontation Clause is the accused's right to be present in the courtroom at every stage of his or her trial. *Lewis v. United States*, 146 U.S. 370, 372-73, 13 S.Ct. 136, 36 L.Ed. 1011 (1892). This Court has not yet addressed the issue of whether the elementary fairness standard for criminal contempt trials requires that a defendant have the rights guaranteed by the Confrontation Clause of the Sixth Amendment, particularly when there is no misconduct or other action on the part of the accused to justify denying him or her such right.

The Petitioners traveled almost 200 miles from New Orleans to Lake Charles, Louisiana to attend the contempt hearing, but were sequestered by the Respondents during the entire hearing, except when they were called to give testimony and to be sentenced. The Petitioners were not even permitted to be present in the courtroom during the testimony of an adverse witness summoned by the Respondent judges.

The Respondents' sequestration order was fundamentally unfair and constituted an impermissible subversion of the Petitioners' rights under the Confrontation Clause and the Due Process Clause of the United States Constitution in the context of a criminal proceeding.[5] The infringements of these constitutional rights should be addressed by this Court.

CONCLUSION

Petitioners in this case were convicted of constructive criminal contempt for expressing their views as to the meaning of the Respondent judges' order. The Petitioners' advice was rendered in good faith and in the honest belief that it was legally sound advice. It was. As the act of communicating opinions is fundamental to the role of a lawyer in our legal system, the Petitioners' utterances should have been regarded as protected speech under the United States Constitution. If, as in this case, the performance of a lawyer's duty in advising their client exposes the lawyer to criminal contempt for giving advice in good faith, the free flow of speech between attorney and client will be undermined. This severe regulation of speech only serves to discourage attorneys from relating advice to their clients. No

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[5] The need for a neutral judge to preside over the criminal contempt action is bolstered by the Respondents' sequestration order. At the outset of the May 27, 1993 contempt hearing, Respondents excluded Petitioners and the other persons charged with contempt. Respondents, as stated in the brief they later filed, apparently viewed the contempt proceeding as civil in nature. See Respondents' Brief, Appendix A-24. Thus Respondents invoked the rule of sequestration. Yet as part of their reasons for adjudging Petitioners to be in contempt, this same panel of state judges characterized the proceeding as a criminal contempt action. See, Appendix A-21.

societal or legal purpose is advanced by the suppression of legitimate speech. See, e.g., *Texas v. Johnson, supra.* Petitioners' convictions for contempt are unconstitutional and should not be allowed to stand.

Equally as important, when, as in this case, the guilt or innocence of the party charged with criminal contempt hinges on the intent of a judge's order, rather than the language of the order, the Due Process Clause of the Fourteenth Amendment requires that the contempt charge be tried by a judge other than the judge who issued the order. Allowing judges, such as the Respondents, to adjudicate the intent of their own order concentrates more power in the hands of a single tribunal than our criminal justice system was designed to tolerate. No official, regardless of position and nobleness of character, should be bestowed with such unprecedented and unfettered authority. To allow a judge in a criminal contempt hearing to decide what she or he intended in confecting an earlier order deprives the accused of a fair and impartial tribunal. At a minimum, the appearance of judicial objectivity is eliminated by this process. The integrity and dignity of the judicial process only can be preserved by removing even the hint of bias.[6]

The State of Louisiana is part of the federal Fifth Circuit. The ruling in this case by the Louisiana Supreme Court directly conflicts with the position embraced by the United States Court of Appeals for the Fifth Circuit in deciding how criminal contempt proceedings must comport with elementary fairness. This conflict should be resolved by

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[6] See, Canon 2 of the Code of Judicial Conduct: "A judge shall . . . act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary."

this Court. No one, including attorneys, should be deprived of liberty and property without due process protections.

Because Petitioners were sequestered throughout the entire criminal contempt hearing, except during their own testimony and sentencing, Petitioners' constitutional guarantees under the Confrontation Clause of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment were violated. The Respondents' sequestration order was fundamentally unfair, constituted an impermissible subversion of the Petitioners' constitutional rights and should be rectified by this Court.

Petitioners respectfully request this Court to grant their Petition for a Writ of Certiorari to address important constitutional issues of national significance that affect fundamental rights of defendants in criminal contempt hearings. Review by this Court is further necessitated to address the jurisprudential conflict surrounding a core due process issue and the procedures that must be followed in contempt proceedings.

It is respectfully submitted that these criminal contempt convictions should be vacated by this Court to attain compliance with the constitutional safeguards afforded

by the First, Sixth and Fourteenth Amendments to the United States Constitution.

Respectfully submitted,

HARRY A. ROSENBERG
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New Orleans, Louisiana 70130
Telephone: (504) 566-1311

ATTORNEYS FOR PETITIONERS, VIRGINIA BOULET, LOUIS G. AUTHEMENT AND WILLIAM D. AARON, JR.

CERTIFICATE OF SERVICE

I, Harry Rosenberg, a member of the Bar of this Court, hereby certifies that on this 14th day of September, 1993, three copies of the Petition for Writ of Certiorari in the above-entitled case were mailed first class postage prepaid, to The Honorable Ulysses Gene Thibodeaux, The Honorable Billie Colombaro Woodard, and The Honorable P. J. Laborde, respondents herein, and upon counsel for the plaintiffs and defendants in the primary proceeding. I further certify that all parties required to be served have been served.

/s/ Harry A. Rosenberg
HARRY A. ROSENBERG
PHELPS DUNBAR
Louisiana Bar No. 11465
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ATTORNEYS FOR PETITIONERS, VIRGINIA BOULET, LOUIS G. AUTHEMENT AND WILLIAM D. AARON, JR.

APPENDIX A

DOCKET NO. 93-1334
15TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA

RICHARD SEALE, ET AL

VERSUS

LARRY A. BAKER, ET AL

JUDGMENT

The Court after considering Plaintiffs' application for a preliminary injunction, upon the verified pleadings, depositions and briefs submitted by both parties, with the matter being taken under advisement by the Court and for the reasons this day assigned in writing,

IT IS ORDERED, ADJUDGED AND DECREED that the preliminary writ of injunction prayed for by the Plaintiffs be denied and that Plaintiffs' demand be rejected at their costs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs' request that this Judgment be suspended during the pendency of any appeal is denied; however, this Judgment is hereby suspended through and only through Friday, May 14, 1993 at 5:00 p.m. C.S.T.

JUDGMENT READ, RENDERED AND SIGNED this 12th day of May, 1993 at [May], Louisiana.

/s/_____
DISTRICT JUDGE

DOCKET NO. 93-1334
15TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA

RICHARD SEALE, ET AL

VERSUS

LARRY A. BAKER, ET AL

REASONS FOR RULING

Plaintiffs herein are Shareholders of the Bank of Lafayette whose combined shares comprise approximately 54.9 percent of the voting stock. Two (2) of the plaintiffs, namely Richard Seale and U. J. Prevost are, additionally, two of the members of a Board of Directors comprised of nine (9) members. The seven (7) individual defendants are the remaining seven (7) Board Members. Also named as a defendant is the Bank of Lafayette.

On March 24, 1993, plaintiffs filed their Petition for Injunctive Relief and Declaratory Judgment. On the same day, based on the allegations contained in the petition and the exhibits attached thereto, the court granted the Temporary Restraining Order prayed for in the petition but, following a hearing in Chambers on defendants' Motion to Dissolve, or Alternatively, to Amend the Temporary Restraining Order, the Temporary Restraining Order was modified and an Order was signed on March 26, 1993 prohibiting only the following actions: (1) The issuance of any additional shares of stock by defendants; and (2) The calling or holding of a shareholder meeting without court approval. April 12, 1993,

was fixed as a hearing date for petitioners' claim that they are entitled to injunctive relief as prayed for in the petition, namely, injunctive relief prohibiting the Board of Directors from implementing the two (2) Resolutions hereinafter referred to as the "Stock Resolution" and the "Confidentiality Resolution," and injunctive relief requiring the Board to comply with instructions to call a special stockholders meeting.

The first Resolution, namely, the "Stock Resolution," has been the focus of most of the arguments, briefing and exhibits offered by counsel for both parties. This Resolution was initially introduced and passed in the form which appears in the Bank of Lafayette Minutes of the Meeting of Board of Directors dated December 21, 1992. (Sealed Exhibit 13). The "Stock Resolution" in its final form, was approved by the Board of Directors at the February 15, 1993 meeting (Sealed Exhibit 15). At a special Meeting of the Board of Directors on March 2, 1993 (Sealed Exhibit 16), the Board of Directors again voted to go forward with implementation of the "Stock Resolution" rather than to pursue a possible sale of the Bank. (Sealed Exhibit 16).

In the meantime, plaintiffs-directors, Richard Seale and U.J. Prevost, had, as of mid December, 1992, indicated their interest in selling the Bank. On or about February 22, 1993, plaintiffs signed options in favor of third party for the sale of their stock at NINE AND NO/100 ($9.00) DOLLARS per share. (Exhibit 37). As reflected by the Board Meetings from December, 1992 through March 15, 1993, their desire to sell the Bank as opposed to the desire of the majority of the Board to implement the "Stock Resolution" gave rise to the present litigation.

The "Stock Resolution" sought to be enjoined authorizes the issuance of between one hundred twenty-five thousand (125,000) and one hundred fifty thousand (150,000) additional shares of Common Stock at SIX AND NO/100 ($6.00) DOLLARS per share and empowers the Bank President, Danny Domingue, who is also a defendant-Board Member, to enter into Stock Purchase Agreements for sixty six thousand six hundred sixty-five (66,665) of the new shares with specified individuals, including defendant-Directors Gerald Hanchey, Larry Baker, and Dan Bouligny. Plaintiffs claim that they will suffer irreparable harm if the stock is issued pursuant to the "Stock Resolution" because they will lose the voting control and control premium which they now have, the immediate effect of which is the loss of ability to initiate a Special Meeting of Shareholders and loss of their ability to act, as a majority, at the Shareholders Meeting. As previously mentioned, the court's modification of the Temporary Restraining Order which it had initially granted, not only prohibited the implementation of the "Stock Resolution", but also enjoined the calling or holding of a Shareholder Meeting without court approval. This latter Order was specifically directed at the plaintiffs' action on March 22, 1993, wherein they issued instructions to Danny Domingue, Bank President, to call a special meeting of the stockholders of the Bank of Lafayette for the purpose of removing defendant-Directors from the Board and taking other actions affecting the composition of the Board. (Exhibit 38). This court issued the modified Temporary Restraining Order in order to keep the status quo until it had an opportunity to review all of the exhibits and the law applicable to the facts and circumstances of this case. Having had that opportunity, the court denies the Injunctive Relief as prayed for because the plaintiffs' have failed to make a showing that they will suffer irreparable injury, loss or damage if the Injunction is not issued and because they

have failed to make a showing that, in all probability, they will prevail at the Trial on the Merits of their Petition for Declaratory Relief.

THE PLAINTIFFS' HAVE FAILED TO MAKE A SHOWING THAT THEY WILL SUFFER IRREPARABLE INJURY, LOSS, OR DAMAGE IF INJUNCTIVE RELIEF IS NOT GRANTED

The court has carefully studied the documentary evidence submitted and has analyzed the case law offered on behalf of both parties. As stated hereinabove, on or about February 22, 1992, plaintiffs' granted to a third party an Option to Purchase Shares of Common Stock, granting to that third person the option to purchase their shares for the price of NINE AND NO/100 ($9.00) DOLLARS per share. The Option remains open until August 31, 1993, but can be extended by mutual consent. (Exhibit 37). This Option Agreement, together with the documentary evidence, including deposition testimony, leads this court to conclude that plaintiffs have quantified their damages at NINE AND NO/100 ($9.00) DOLLARS per share for all purposes of this litigation. The documentary evidence and deposition testimony convinces this court that plaintiffs, at all relevant times, have been willing, remain willing and are working toward the sole purpose of selling the Bank for NINE AND NO/100 ($9.00) DOLLARS per share. Considering all of the evidence, the court finds that the plaintiffs' have an adequate remedy at law if the Bank proceeds with the "Stock Resolution", and that the plaintiffs, themselves, have quantified their damages in the event of an ultimately successful action for damages.

In making this ruling the court is mindful of the fact that, without injunctive relief, the new shares will probably

be issued before the plaintiffs can use their majority status to replace the defendant-Directors. (Exhibit 38 unequivocally shows this to be plaintiffs' intention). There is no doubt from all the evidence, that plaintiffs intend to replace the defendant-directors with directors who support their position, i.e. the sale of the Bank at the present time as opposed to proceeding with the recapitalization plan as passed by the board. These facts give rise to plaintiffs argument that they will suffer irreparable harm if the new shares are issued because, after the issuance, they will no longer constitute a majority, with all that this implies. It is correct that, after the new stock issuances, plaintiffs will not constitute a majority. This means that, unless plaintiffs can convince other shareholders, new or old, to support their position, the Bank will not be sold to the holder of plaintiffs' options. Plaintiffs damages from these circumstances, if they should succeed in proving they were wronged, can be quantified by the option price. As will be developed next, this court feels that plaintiff will not be able to prove that they have been wronged.

IN ORDER TO PREVAIL ON THE MERITS, PLAINTIFFS MUST PROVE THAT GROUNDS EXIST FOR THIS COURT TO NULLIFY THE TWO RESOLUTIONS AT ISSUE, NAMELY THE "STOCK RESOLUTION" AND THE "CONFIDENTIALITY RESOLUTION."

The plaintiffs have cited no Louisiana authority for nullifying the Resolutions. Defendants have correctly pointed out that, according to Louisiana Law, plaintiffs have no legal right to retain their percentage of ownership, i.e., their majority ownership of shares. Neither Louisiana Law nor the Articles of Incorporation of the Bank provide any support for plaintiffs' argument that majority approval of

stockholders is required for issuance of stock pursuant to the "Stock Resolution." The Articles of Incorporation and By-Laws do not provide for preemptive rights. In essence, under Louisiana Law and the Articles of Incorporation and By-Laws, plaintiffs have no legal authority in support of their claim that injunctive relief should be granted or that they should prevail on the merits of their claim that they are damaged because their majority shares will be diluted by the new stock issuance pursuant to the "Stock Resolution."

Both parties agree that Delaware Law provides guidance to courts in a case such as this and this court has carefully studied many Delaware cases submitted by both parties. As this court appreciates Delaware Law, in order for plaintiffs to prevail, the evidence will have to show that the primary purpose of the "Stock Resolution" is to deprive plaintiffs of their majority voting position. Canada Southern Oils, Ltd. v. Manabi Exploration Co., 96 A.2d 810 (Del. Ch. 1953), and Blasius industries, Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988). The Delaware cases in which such a finding was made are factually distinguishable from the instant case. Furthermore, a more recent pronouncement of the Delaware courts, i.e., the case of Paramount Communications v. Time Inc., 571 A.2d 1140 (Del. 1990), convinces this court that the "primary purpose" principal of law will be applied in a restrictive sense and only under fairly unique circumstances, and that plaintiffs' position in the instant case is unsound, factually and legally.

In the instant case, as the court's review of the documentary evidence has shown, the Bank had been working on a recapitalization plan as early as June, 1992, which culminated in the passage of the "Stock Resolution". Throughout this time period all of the evidence indicates that the plaintiffs-Directors, Mr. Seale and Mr. Prevost, were

afforded the same information and open discussion as were all of the other Board Members. They questioned experts and voiced their opinions. The court is impressed with the obvious good faith exhibited by the Board of Directors in securing presentations by financial consultants and legal advisors to assist it in deciding what course to take to insure the best interest of the Bank as a whole, namely, all of the shareholders. The court finds that the primary purpose of the "Stock Resolution" was to insure implementation of the capitalization plan, which itself arose in response to federal regulatory requirements, and that this capitalization plan, including the "Stock Resolution" was pursued, as opposed to the sale of the Bank, only after the receipt by Board Members of detailed financial considerations by financial advisors and detailed legal consideration by legal advisors. The plaintiffs-Directors, Mr. Seale and Mr. Prevost, failed to convince the majority of Board Members of the wisdom of their position that the Bank should be sold. This was a business decision which this court cannot find fault with after its review of all of the evidence. (The court will pretermit any detailed discussion of the cases involving the legal standard applicable to a bank "in play" since the court finds that the Bank was never "in play" and does not consider this a serious issue).

In conclusion, simply stated, plaintiffs-Directors and the shareholders whose views they represent want to sell the Bank. The majority of the Directors feel that a sale at this time is not in the best interest of all of the shareholders. The majority of the Board feel that going forward with the capitalization of the Bank, including the issuance of stock pursuant to the "Stock Resolution," as opposed to the sale of the Bank, is best for the Bank and all of its shareholders at the present time. Although the practical effect of the recapitalization plan, including the "Stock Resolution," will

be that the plaintiffs' percentage ownership of shares will be diluted, plaintiffs have failed to show that this dilution is the primary purpose of the "Stock Resolution." Accordingly, plaintiffs have failed to make a showing of the probability of their success at Trial on the Merits on this issue.

PLAINTIFFS ARE NOT ENTITLED TO INJUNCTIVE RELIEF PROHIBITING ENFORCEMENT OF THE "CONFIDENTIALITY RESOLUTION"

At the Board of Directors meeting on February 15, 1993, following passage of a revised formal "Stock Resolution," the Board of Directors adopted what is referred to as the "Confidentiality Resolution" which states, in essence, that materials prepared for or relating to the subject of board meetings shall not be removed from the premises of the Bank or the contents thereof disclosed to any third party without prior approval of a majority of the Board. This Resolution was introduced by one of the plaintiff-Directors and was passed unanimously. The plaintiffs have established no facts or made any convincing arguments as to why this court should invalidate the Resolution which was unanimously passed by the Board. Plaintiffs have failed to establish irreparable harm or the probability of success on the merits as to this issue. Accordingly, injunctive relief prohibiting enforcement of the "Confidentiality Resolution" is denied.

SUSPENSION AND EXECUTION OF THIS COURT'S JUDGMENT

This Court has held extensive chamber conferences with the attorneys involved in this matter. As will be seen from a review of all the documentary evidence, compliance with federal regulatory banking agencies' requirements us a

motivating factor for defendants' actions. Under the court's modified Temporary Restraining Order, the Bank was permitted to go forward with all of the paperwork involved in implementing the "Stock Resolution" with the only prohibition remaining being the prohibition against actual issuance of the Stock Certificates. Substantial funds have been placed in escrow by subscribers to the new stock issuance authorized by the "Stock Resolution." Issuance of the stock is to take place no later than May 15, 1993. These actions and the May 15th date have been known by the Court and all of the parties and the delay in this court's ruling on the Preliminary Injunction was due to the court's desire to give the parties time to amicably resolve their differences. However, in view of the May 15, 1993, deadline for issuance of these stocks in accordance with the "Stock Resolution" this court has now made its ruling and is aware that plaintiffs will be seeking appellate relief. After hearing argument by both parties, and with a view to protecting the interests of both parties, namely, defendants desire to effect issuance of the stock certificates by May 15, 1993, and plaintiffs' desire to seek appellate review prior to that time, the court is suspending execution of its Judgment until May 14, 1993, at 5:00 p.m. Judgment will be signed upon presentation.

Lafayette, Louisiana this 12th day of May, 1993.

/s/
HONORABLE EDWARD D. RUBIN
JUDGE, 15TH JUD. DIST. CT.
DIVISION "D"

APPENDIX B

NUMBER 93-580
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

RICHARD SEALE, ET AL
VERSUS
LARRY A. BAKER, ET AL

May 14, 1993
Lake Charles, La.

WRIT GRANTED:

All proceedings in this care are stayed pending further action of this court. The Clerk of the Fifteenth Judicial District Court, Parish of Lafayette, is hereby ordered to forward to this court within 45 days the complete record with transcript in these proceedings to date.

The Realtors are hereby given 25 days in which to file any additional briefs, if desired. The Respondents are hereby given 45 days in which to file any opposition briefs, if desired.

This matter will be set for oral argument, if requested, at a later date, and all parties will be notified.

/s/	/s/	/s/
P. J. L., Jr.	U. G. T.	B. C. W.

APPENDIX C

NUMBER 93-580
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

RICHARD SEALE, ET AL
Plaintiffs - Relators

VERSUS

LARRY A. BAKER, ET AL
Defendants - Respondents

On Writs from the Fifteenth Judicial District Court, in and for the Parish of Lafayette, State of Louisiana, the Honorable Edward D. Rubin, Judge, Presiding.

ORDER

Attorney for defendants-respondents, Virginia Boulet, having allegedly participated in the sale of stock in violation of this court's order of May 14, 1993, staying all proceedings in this matter pending further action of this court, is Hereby Ordered to appear in the courtroom at the Court of Appeal, Third Circuit, at 1000 Main Street, Lake Charles, Louisiana, on May 27, 1993, at 10:00 A.M. to answer why she should not be held in contempt of court for having willfully disobeyed an order of this Court.

THUS DONE AND SIGNED this 20th day of May, 1993.

/s/
JUDGE ULYSSES GENE THIBODEAUX
For the Court

NUMBER 93-580
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

RICHARD SEALE, ET AL
Plaintiffs - Relators

VERSUS

LARRY A. BAKER, ET AL
Defendants - Respondents

On Writs from the Fifteenth Judicial District Court, in and for the Parish of Lafayette, State of Louisiana, the Honorable Edward D. Rubin, Judge, Presiding.

ORDER

Attorney for defendants-respondents, Louis G. Authement, having allegedly participated in the sale of stock in violation of this court's order of May 14, 1993, staying all proceedings in this matter pending further action of this court, is Hereby Ordered to appear in the courtroom at the Court of Appeal, Third Circuit, at 1000 Main Street, Lake Charles, Louisiana, on May 27, 1993, at 10:00 A.M. to answer why he should not be held in contempt of court for having willfully disobeyed an order of this Court.

THUS DONE AND SIGNED this 20th day of May, 1993.

/s/
JUDGE ULYSSES GENE THIBODEAUX
For the Court

NUMBER 93-580
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

RICHARD SEALE, ET AL
Plaintiffs - Relators

VERSUS

LARRY A. BAKER, ET AL
Defendants - Respondents

On Writs from the Fifteenth Judicial District Court, in and for the Parish of Lafayette, State of Louisiana, the Honorable Edward D. Rubin, Judge, Presiding.

ORDER

Attorney for defendants-respondents, William D. Aaron, having allegedly participated in the sale of stock in violation of this court's order of May 14, 1993, staying all proceedings in this matter pending further action of this court, is Hereby Ordered to appear in the courtroom at the Court of Appeal, Third Circuit, at 1000 Main Street, Lake Charles, Louisiana, on May 27, 1993, at 10:00 A.M. to answer why he should not be held in contempt of court for having willfully disobeyed an order of this Court.

THUS DONE AND SIGNED this 20th day of May, 1993.

/s/
JUDGE ULYSSES GENE THIBODEAUX
For the Court

APPENDIX D

DOCKET NO. W93-580
THIRD CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

RICHARD SEALE; ET AL

VERSUS

LARRY A. BAKER, ET AL

PER CURIAM

The rule for contempt, filed in this matter on the 20th day of May, 1993, against **VIRGINIA BOULET** came on this day for hearing. The Court having heard the pleadings, evidence and argument of counsel,

IT IS ORDERED, ADJUDGED AND DECREED that said rule be made absolute, adjudging the said **VIRGINIA BOULET**, defendant in rule, guilty of contempt of the authority of this Court in that the said defendant in rule did violate this Court's stay order of May 14, 1993. Accordingly, **VIRGINIA BOULET** is sentenced as follows: She is hereby ordered to pay a fine of $500 (Five Hundred Dollars) and ordered to serve thirty (30) days in jail; all but five (5) days suspended. Court costs of $75.00 are further assessed.

A TRUE COPY
Lake Charles, La. May 27, 1993

/s/_____
Clerk, Court of Appeal, Third Circuit

DOCKET NO. W93-580
THIRD CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

RICHARD SEALE; ET AL

VERSUS

LARRY A. BAKER, ET AL

PER CURIAM

The rule for contempt, filed in this matter on the 20th day of May, 1993, against **LOUIS G. AUTHEMENT** came on this day for hearing. The Court having heard the pleadings, evidence and argument of counsel,

IT IS ORDERED, ADJUDGED AND DECREED that said rule be made absolute, adjudging the said **LOUIS G. AUTHEMENT**, defendant in rule, guilty of contempt of the authority of this Court in that the said defendant in rule did violate this Court's stay order of May 14, 1993. Accordingly, **LOUIS G. AUTHEMENT** is sentenced as follows: He is hereby ordered to pay a fine of $500 (Five Hundred Dollars) and ordered to serve thirty (30) days in jail; all but five (5) days suspended. Court costs of $75.00 are further assessed.

A TRUE COPY
Lake Charles, La. May 27, 1993

/s/
Clerk, Court of Appeal, Third Circuit

DOCKET NO. W93-580
THIRD CIRCUIT COURT OF APPEAL
STATE OF LOUISIANA

RICHARD SEALE; ET AL

VERSUS

LARRY A. BAKER, ET AL

PER CURIAM

The rule for contempt, filed in this matter on the 20th day of May, 1993, against **WILLIAM D. AARON, JR.** came on this day for hearing. The Court having heard the pleadings, evidence and argument of counsel,

IT IS ORDERED, ADJUDGED AND DECREED that said rule be made absolute, adjudging the said **WILLIAM D. AARON, JR.**, defendant in rule, guilty of contempt of the authority of this Court in that the said defendant in rule did violate this Court's stay order of May 14, 1993. Accordingly, **WILLIAM D. AARON, JR.** is sentenced as follows: He is hereby ordered to pay a fine of $500 (Five Hundred Dollars) and ordered to serve thirty (30) days in jail, all but five (5) days suspended. Court costs of $75.00 are further assessed.

A TRUE COPY
Lake Charles, La. May 27, 1993

/s/_____
Clerk, Court of Appeal, Third Circuit

NO. 93-580
IN AND FOR THE COURT OF APPEAL
THIRD CIRCUIT
STATE OF LOUISIANA

RICHARD SEALE, ET AL
VERSUS
LARRY A. BAKER, ET AL

[EXCERPT OF TRANSCRIPT
OF CONTEMPT HEARING]

Evidence adduced and proceedings had in the above numbered and captioned cause, on May 27, 1993, 10:00 a.m., before the Honorable P.J. LaBorde, Honorable Ulysses Gene Thibodeaux, and the Honorable Billie Woodard, Judges of the Third Circuit Court of Appeal, at Lake Charles, Louisiana,

APPEARANCES:

COUNSEL FOR:	MR. ALLEN L. SMITH, JR.
BANK OF LAFAYETTE,	PLAUCHE, SMITH & NIESET
ROBERT DAIGLE,	Post Office Drawer 1705
HENRY C. PERRET,	Lake Charles, LA 70602
DANIEL R. DOMINGUE,	
LARRY A. BAKER, CHARLES	
A. MILAM, GERALD HANCHEY,	
ROBERT L. FOURNET, F. LLOYD	
COMEAUX, JOSEPH D. BOULIGNY,	
LOUIS G. AUTHEMENT, VIRGINIA	
BOULET, AND WILLIAM D. AARON	

JUDGE THIBODEAUX: As far as this Court can ascertain, this is the first time in this Court's history that a litigant has been accused of willfully violating a court order. On several occasions persons are brought before this Court on contempt matters for failing to file appellate briefs. That is done with regularity. This is the first time that this has ever been done. Unfortunately and regrettably, we have found certain defendants willfully violated this Court's order of May 14, 1993. We granted the plaintiffs supervisory writ and ordered all proceedings stayed in this matter to preserve the status quo. We find no merit to the defendants argument that the language of the May 14th order did not specifically enjoin the sale of the stock in question. This is particularly true in light of the fact that defendants immediately filed a supervisory writ application to the Louisiana Supreme Court upon notification of our order, arguing we had in fact enjoined the sale of the stock.

That writ was dismissed with prejudice after it was filed with the Supreme Court pursuant to the defendants request and the stock sale took place on Friday, May 14th, 1993, at approximately 5:55 p.m. In response to the plaintiffs motion asking that this court rescind this sale, defendants attempt to explain the arguments contained within their writ application by arguing that there was no time to read this Court's order prior to the filing of the writ to the Supreme Court and that they were merely basing their request on the plaintiffs prayer in the original supervisory writ application to this Court. However, we find this argument to be unpersuasive, given the fact that the writ application to the Supreme Court specifies that this Court ordered the entire record in this proceeding to be delivered to it from the trial court within forty-five days. The only way defendants could have known this fact was to have read the order. Defendants cannot now deny what has been

judicially admitted in its writ application to the Supreme Court. This Court fully intended its May 14th order to prevent the sale of this stock until we could thoroughly review the entire record to determine whether the trial court's ruling was correct.

Furthermore, whether the stock sale should be enjoined was the only issue presented to this Court in the plaintiffs original writ application to this Court. Therefore, if this Court's stay order is to be given any effect, it can only be interpreted as staying the stock sale. To have allowed the sale to go forward would have allowed the defendants to have rendered moot the case this Court called up in granting plaintiffs writ. This Court clearly did not intend this result from the issuance of its stay order. If defendants failed to understand the full meaning of this Court's order, there were remedies available to them for clarification.

It has been held that ambiguities in the language of a court order is not a legally sufficient defense in a civil contempt proceeding. Nasco v. Calcasieu Television and Radio, at 583, F. Supp. 115, Western District of Louisiana, 1984. We think this is equally true in a criminal contempt proceeding such as this one. Furthermore, if a person to whom a court directs an order believes that order is incorrect, the proper remedy is to apply for review, but absent a stay to comply promptly with the order pending review. Persons who make private determinations of the law and who refuse to obey an order risk criminal contempt, even if the order is ultimately ruled incorrect.

We find, therefore, that the defendants argument that this Court never intended to enjoin the sale of the stock is without merit. Now, in a civil contempt proceeding the federal court has held that acting on the advice of counsel is

no defense. We agree with this reasoning and extend it to a criminal contempt proceeding. Therefore, the defendant-in-rule and president and one of the directors, Danny Dominuge in this case, who claimed to have acted merely on the advise of counsel may not use this as an excuse for violation of this Court's order.

Judges Laborde and Woodard have given the penalties which the Court has imposed to several of the defendants-in-rule. We feel that the imposition of a lesser penalty would deprecate the seriousness of the defendants disobedience and disregard of our court's order, would undermine the integrity of this Court, and would not deter contemptuous future conduct. The dignity of this Court would be severely questioned and the public perception of the Court's authority would be diminished and impaired.

In addition to those factors which I have just listed, we have before us experienced lawyers, or lawyers who are working under experienced lawyers and litigators and appellate attorneys who knew or should have know both of the letter, the meaning, and the spirit of this Court's order of May 14, 1993. The testimony reveals that there was admitted confusion with respect to the meaning of this order. In fact, the attorneys spent several hours researching the issues before and after the issuance of the court order. Yet no one requested a clarification. We additionally find that the evidence is not totally persuasive and not totally credible under the circumstances of this case.

The defendants rely on a hyper-technical reading of the order, but as has been held in the past, it is the spirit of the order and not merely its precise words that must be obeyed. We find that essentially revealing is Mr. McDonald's phone call to the clerk of court seeking

clarification. It was then made clear that while the deputy clerk did not explicitly state that an injunction was issued, the defendants were specifically advised that the Court meant to maintain the status quo. Article 5, Section 10 of our constitution gives this Court plenary power under its supervisory jurisdiction to issue a stay, and under Article 191 of the Code of Civil Procedure, "A court possess inherently all the powers necessary for the exercise of its jurisdiction, even though not granted explicitly by law." The very purpose of our staying the proceedings on May 14th and ordering the record was to avoid a precipitous, improvident, imprudent, and uninformed decision. We wanted to appropriate the necessary time to seriously study the issues involved. That purpose was undermined and obviated by the defendants conduct. What began as a noble and benevolent objective turned into an unanticipated, very unpleasant experience. Given the defendants conduct in ignoring this Court's May 14th order, we feel that we've done what is proper in this case.

MR. SMITH: May it please the Court. Your Honors, I would like to ask on behalf of all those persons found guilty of the rule for contempt to suspend, to ask for a stay order, as it were, of the imposition of sentence to allow them to seek writs to the Louisiana Supreme Court concerning this finding today.

JUDGE LABORDE: That's denied. The Court is now adjourned.

[COURT ADJOURNED]

APPENDIX E

DOCKET NUMBER 93-C-1426
SUPREME COURT
STATE OF LOUISIANA

HEARING ON CONTEMPT IN RE:

RICHARD SEALE, ET AL
VERSUS
LARRY A. BAKER, ET AL

PER CURIAM

This response is submitted to this Honorable Court on behalf of the Louisiana Third Circuit Court of Appeal to supplement its prior reasons for judgment, finding defendants in rule (defendants) Henry Perrett, Robert Daigle, William Aaron, Virginia Boulet, Louis Authement, Daniel Domingue, and the Bank of Lafayette, guilty of contempt of court.

This matter involves a contempt proceeding held at the Louisiana Third Circuit Court of Appeal on Thursday, May 27, 1993, where it was adjudged that defendants had willfully and intentionally violated a Third Circuit stay order issued on Friday, May 14, 1993. Having found seven of the original thirteen defendants in rule guilty of contempt of court, each was sentenced pursuant to LSA-R.S. 13:4611(1)(d) to a fine of $500.00 and a jail sentence of 30 days, all but five of which were suspended and assessed with $75.00 in court costs.

In defendants' writ application to this court, they allege the following:

- defendants in rule were improperly sequestered;

- the court treated defendants in rule in a "generally rude" manner;

- various constitutional rights of the defendants were violated during the May 27th hearing (improperly characterized as a "criminal trial" by defendants);

- the court deliberately delayed issuing the sentences until after 5:00 p.m.;

- the court held defendants in contempt whether or not they participated in the stock issuance;

- the court of appeal ignored all evidence presented to it at the contempt proceeding.

At the outset, we are compelled to inform this court that we sincerely tried to treat the defendants with the utmost respect and courtesy during the course of the contempt proceeding. We feel we succeeded. The hearing transcript demonstrates this. The writ application indicates that the defendants were made to stand in front of the court and grilled with leading questions. Yet, the transcript reveals defendants' counsel, Mr. Allen Smith, agreed to the procedure which the parties would follow in the proceeding (Hearing Transcript pg. 2) and that he in fact invited the members of the panel to stop at any time and ask direct questions of any defendant in rule for any explanation at any time. (H. T. pp. 5-6). Furthermore, each defendant was permitted to recite a narrative version of the facts to the panel. It was only when

the panel sought clarification or further explanation that they questioned the defendants as they were invited to do by defense counsel. Therefore, defendants' argument that each defendant was forced to "face leading questions about irrelevant issues, and generally rude treatment" is simply untrue.

Next, defendants argue they were improperly sequestered in violation of their constitutional rights. However, defendants were only sequestered after their attorney, Allen Smith, agreed to the sequestration. This hearing was in no way conducted in a fashion "calculated" to deny the defendants' constitutional rights. Furthermore, defendants never objected to the sequestration order. It is difficult to imagine under these circumstances how one's constitutional rights have been violated.

Defendants also argue that the panel deliberately withheld the imposition of their sentence until after 5:00 p.m. This argument is wholly without merit. The contempt proceeding concluded at approximately 4:00 p.m., at which time the panel immediately began its deliberations in light of the evidence with which it was presented. Immediately following these deliberations, the panel instructed court personnel to draft a per curiam order for each defendant which the panel found guilty of contempt of court. As soon as these orders were completed, the panel rendered its decision, followed by a recitation of its reasons for judgment. This court conducted its deliberations promptly and professionally. We are disappointed by the implication that it willfully attempted to thwart the defendants' access to supervisory relief by the Supreme Court.

The panel allowed all concerned parties the opportunity to say anything they wanted to in explanation

of their position. Rather than adjourning for the day and ordering the defendants to appear again on the following day, this court concluded that the wiser course of action would be to render a decision immediately as a convenience to the defendants.

Defendants further argue that the Third Circuit erroneously held certain defendants in contempt regardless of whether they issued the stock in question. Once again, defendants are incorrect. Each defendant found guilty of contempt of court was found guilty of participating in the sale of stock in violation of the May 14 order. Defendants would have this Honorable Court believe that each defendant found guilty was found guilty for "issuing stock in violation of an order of the court" (see defendants' writ application page 8-9). However, the Third Circuit issued a rule to each defendant for having allegedly participated in the sale of stock in violation of our May 14 order. (See a copy of one of the Rule to Show Cause Orders attached as Exhibit 1). The entire purpose of the contempt proceeding was to ascertain whether the defendants willfully violated our stay order and, if so, to seek the truth about which of the defendants actually participated in the stock sale. This is especially true in light of the fact that the only information which the Third Circuit had at the time each order was issued was that the sale had taken place. After hearing the testimony and evidence presented, we held only those defendants in contempt of court who actively participated in the stock sale, by either issuing the stock or advising that to proceed with the stock sale was proper. Therefore, defendants' argument that they were held in contempt whether or not they actually issued the stock is without merit.

Defendants' argument that this court ignored the testimony and evidence presented to them at the hearing is

also without merit. Defendants' argument reiterates the same erroneous legal argument before this Honorable Court as they attempted to assert to the Third Circuit during the contempt proceedings. Defendants' error is their attempt to fit the May 14 stay order within the confines of the injunction articles of the Louisiana Code of Civil Procedure. The Third Circuit's stay order was issued pursuant to its supervisory jurisdiction in order to preserve the status quo ante of the case pending our review. We fully intended to prevent the sale of the stock in question through the issuance of this stay order. It would have been improper for this court to have issued a temporary restraining order in response to a supervisory writ requesting us to review the propriety of the trial court's denial of the plaintiffs' preliminary injunction. Therefore, the only proper course for this court to pursue was to maintain the status quo.

Furthermore, the only issue presented in the plaintiffs' original writ to the Third Circuit was the sale of the stock. Our intention to preserve the status quo is further indicated by the fact that had we granted a preliminary injunction, there would have been no reason to have called up this particular writ because the only issue presented would have been determined. The fact that we called up the writ for review indicates we intended to preserve the status quo and prevent the stock sale at that time. Finally, the testimony at the contempt proceeding revealed that defendants were fully aware of our intentions. Deputy Chief Clerk of Court, Kelly McNeely, testified that Ian MacDonald of defendants' Lafayette law firm Phoned him after our order was issued seeking clarification of our stay order. This testimony reveals Mr. McNeely specifically informed Mr. MacDonald that the stay order suspended all proceedings and that the status quo was to be maintained (See H. T. pg. 80-81). Indeed, the telephone records of Mr. MacDonald's law firm

confirms that the call to the Third Circuit was made at 3:32 p.m. (T. pp. 123-124) which was after the decision on the stay order. To assert that Mr. McNeely spoke with Mr. MacDonald after the receipt of the stay order is misleading. Mr. McNeely simply stated he spoke with Mr. MacDonald after the ruling was made (T. pp. 80-81). Given that defendants were fully aware of our intentions but nonetheless proceeded with the stock sale, we found they had willfully violated the May 14 stay order.

The defendants forcefully contend that the only effect of a stay order is to divest the lower court of jurisdiction and to prevent further action by that court. Thus, there was no legal impediment barring the sale of the stock or preventing any action by the parties. This Honorable Court stayed the Third Circuit's order in this case on May 27th until such time as it could consider the merits of defendants' writ application. An extension of the defendants' argument would suggest that the Third Circuit cannot act any further in implementing its order. Moreover, it is interesting and ironic to note that this argument would further suggest that there exists no impediment to defendants' immediate incarceration while the Supreme Court's stay is in effect. Clearly, this is not the effect intended by the Supreme Court stay order - just as it was not this court's intended result to allow the sale of the stock.

The characterization of this court's conduct as "a gross departure from proper judicial procedure" and "in a fashion calculated to deny... the Applicants their due process and other rights..." (emphasis added) and the characterization of the hearing being conducted "with lack of dignity befitting a court" is unfortunate. Those observations betray the fact that counsel for the defendants participated in a pre-hearing conference with all panel members of this court and made

suggestions as to the procedure to be used by the court, and specifically agreed to all procedures used. The defendants were accommodated in a manner which afforded them every courtesy and reflected the court's view that these proceedings be fair and impartial. There is absolutely no evidence to even suggest rude treatment by this court.

Moreover, the record demonstrates that this court went beyond the necessary procedural safeguards. There is nothing in the jurisprudence which dictates that one accused of contempt of court is entitled to a full scale trial with the protections attendant thereto. All that is required is elementary due process protections. See, Taylor v. Hayes, 418 U.S. 488, 94 S.Ct. 2697, 41 L.Ed. 2d 897 (1974). Notwithstanding, this court conducted the hearing in accordance with the wishes of counsel for defendants, giving them every opportunity to call who ever they wished, for as long as they wished, and in the manner they wished.

One minor, yet revealing, point is worth noting. The defendants assert in their supplemental memorandum that they brought their own court reporter; otherwise, there would be no record of the proceedings. Applicant's Supplemental Memorandum In Support of Application For Emergency Writs, p. 9). That is false and is reflective of the credibility given to their testimony at the hearing. The Third Circuit routinely tapes all proceedings which come before it. This hearing was no exception. As an added precaution and a convenience to the parties, the Third Circuit hired Ms. Barbara Calloura and paid her for her court time. The defendants simply paid her for transcribing the testimony. We are truly disappointed in these misleading and downright false representations to this Honorable Court.

At best, the arguments of defendants regarding the court's procedures are specious and feeble attempts to circumvent their contemptuous conduct. At worst, it is an abrogation of defendants' responsibility under Rule VII, Section 7 of the Rules of the Supreme Court of Louisiana:

> The language used in any brief or document filed in this court must be courteous, and free from insulting criticism of any person, individually or officially, or of any class or association of persons, or of any court of justice, or other institution. Any violation of this rule shall subject the author or authors of the brief or document to the humiliation of having the brief or document returned, and to punishment for contempt of the authority of the court.

The tone and wording of defendants' writ application in the use of its insulting, demeaning, and falsely accusatory language is a further poignant extension of their contemptuous conduct.

Our court's efforts in these proceedings were sincerely motivated by a desire to maintain respect for the administration of our system of justice and uphold the dignity and authority of court orders. We acknowledged that grave responsibility. We did our best. Hopefully, we succeeded in vindicating the power of our supervisory jurisdiction while

concomitantly protecting the rights of those persons who appeared before us. We genuinely believe we did.

Exhibit - 1
to Appendix E

NUMBER 93-580
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA

RICHARD SEALE, ET AL
Plaintiffs - Relators

VERSUS

LARRY A. BAKER, ET AL
Defendants - Respondents

On Writs from the Fifteenth Judicial District Court, in and for the Parish of Lafayette, State of Louisiana, the Honorable Edward D. Rubin, Judge, Presiding.

ORDER

Attorney for defendants-respondents, William D. Aaron, having allegedly participated in the sale of stock in violation of this court's order of May 14, 1993, staying all proceedings in this matter pending further action of this court, is Hereby Ordered to appear in the courtroom at the Court of Appeal, Third Circuit, at 1000 Main Street, Lake Charles, Louisiana, on May 27, 1993, at 10:00 A.M. to answer why he should not be held in contempt of court for having willfully disobeyed an order of this Court.

THUS DONE AND SIGNED this 20th day of May, 1993.

/s/_____
JUDGE ULYSSES GENE THIBODEAUX
For the Court

APPENDIX F

THE SUPREME COURT OF THE STATE OF LOUISIANA

NO. 93-OC- 1426
RICHARD SEALE; ET AL
VS.
LARRY A. BAKER, ET AL

- - - - - -

IN RE: Boulet, Virginia; Authement, Louis G.; Bank of Lafayette; Aaron, Williams D. Jr.; Domingue, Daniel R.; Perret, Henry C. Jr.; Daigle, Robert W.; - Defendant(s); Applying for Motion to Stay Contempt Orders; to the Court of Appeal, Third Circuit, Number CW93-0580

- - - - - -

June 18, 1993

Granted in part. The contempt orders are amended to delete the jail sentences. Otherwise, writs are denied.

PH

PFC

JLD

JCW

HTL

CDK

ROO

MARCUS, J., not on panel.

Supreme Court of Louisiana
June 18, 1993

/s/

Clerk of Court
For the Court